

September 9, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 200554

RE: Reply Comments
WC Docket No. 04-223
*In the Matter of Qwest Petition for Forbearance in the
Omaha Metropolitan Statistical Area*

Dear Ms. Dortch:

On behalf of the Nebraska Public Service Commission (NE PSC), I hereby submit this letter in response to Federal Communications Commission's (Commission) request for comments in the above-referenced proceeding.

Qwest has petitioned for forbearance in the Omaha Metropolitan Statistical Area (MSA) due to the significant retail market share it has lost. While the NE PSC agrees that the number of local exchange customers served by Qwest in the Omaha MSA has decreased, we disagree that permitting forbearance from Sections 251(c) and 271 of the Federal Telecommunications Act of 1996 is appropriate.

In fact, the NE PSC has deep concerns that granting Qwest's Petition for Forbearance will have negative repercussions in Nebraska. Since 1996, the NE PSC has strived to create an environment that fosters competition in the local exchange market. By granting Qwest's Petition, the work that has been done by the NE PSC, our state legislature and the Commission and the success that has been achieved to date will be diminished.

Under Section 10(a) of the Act, the Commission must find that enforcement of its rules is not necessary to (1) ensure that rates and practices are just, reasonable and are not

unreasonably discriminatory; (2) maintain adequate consumer protections; and (3) protect public interest.¹ It is the NE PSC's opinion that the petition fails to meet these basic criteria.

Qwest remains the sole ubiquitous provider in the Omaha MSA area and retains significant dominance in the wholesale market. Quite simply, Qwest's presence in the wholesale market is not duplicated and equivalent wholesale alternatives do not exist.

Every CLEC, facilities-based or otherwise, still rely heavily on the provisions that are set forth in Sections 251 (c) and 271. For example, the obligation to negotiate in good faith under Section 251(c) is critical for any CLEC to provide service. Further, the obligation to interconnect at any point is vitally important in provisioning local exchange service, as is the ability to collocate. If Qwest is not obligated to negotiate in good faith, to interconnect at technically feasible points or to collocate, the CLECs and ultimately consumers will suffer.

Finally, it is worth noting that the Omaha MSA is larger than simply the City of Omaha and its surrounding metropolitan suburbs. In fact, the Omaha MSA includes portions of rural Nebraska and rural Iowa. We urge the Commission to examine closely and carefully the level of wholesale competition that exists in the entire MSA and determine whether a true alternative is available throughout the area.

In conclusion, the NE PSC has strong concerns regarding Qwest's Petition for Forbearance and we do not endorse its approval. The harmful impact this will have on competition cannot be over emphasized. We believe that granting Qwest's Petition will be a set back for our state and for the competitive local exchange market.

Sincerely,

Commissioner Gerald L. Vap
Chairman

¹ 47 U.S.C. §160(a)(1)-(3).